



## Office of Special Education Significant Disproportionality Guidance March 2020

### Frequently Asked Questions about Significant Disproportionality

#### **What is significant disproportionality?**

*Significant disproportionality* occurs when children from a particular racial or ethnic group in a LEA are found to be at significantly greater risk of being identified for special education services, identified for special education services in a particular category, or once in special education, placed separately from their peers or removed from their least restrictive environment for disciplinary reasons.

#### **Has the federal Office of Special Education Programs (OSEP) issued guidance around significant disproportionality?**

Per [34 CFR §300.646-647](#), all states are required to annually identify local educational agencies (LEAs) with significant disproportionality. The analytic methods are prescribed by the regulations and involve risk ratios and alternate risk ratios. OSEP has created a [document](#) that answers many common questions about the regulations. These policies have been implemented in Nebraska according to the following information.

#### **For which racial/ethnic groups is significant disproportionality calculated?**

Significant disproportionality must be calculated for seven racial/ethnic groups, when there are a sufficient number of students in the group to allow for reliable calculations. The groups are:

1. American Indian or Alaskan Native,
2. Asian,
3. Black or African American,
4. Hispanic/Latino,
5. Native Hawaiian or Other Pacific Islander,
6. White, and
7. Two or More Races.

#### **What is Nebraska's definition of significant disproportionality?**

Nebraska considers an LEA to have significant disproportionality when the risk ratio for any racial/ethnic group in any of the required identification, placement, or discipline categories exceeds 4.0 for three consecutive years. The required categories, as well as exceptions for small numbers are described below.

## How does Nebraska calculate significant disproportionality for identification?

Significant disproportionality in identification occurs when children ages 3-21 in a particular racial/ethnic group are at a significantly greater risk than their peers in other racial/ethnic groups of being:

1. identified as a child with a disability,
2. identified as a child with a specific learning disability,
3. identified as a child with an intellectual disability,
4. identified as a child with a speech and language impairment,
5. identified as a child with other health impairment,
6. identified as a child with autism, or
7. identified as a child with an emotional disturbance.

OSEP does not require disproportionality calculations for the remaining disability categories because they typically have very small numbers of children.

The risk for children from a specified racial/ethnic group (or groups) to be identified in a category is calculated by dividing the number of children from the specified racial or ethnic group (or groups) being identified in that category by the total number of children from that racial or ethnic group or groups enrolled in the LEA. For example, if an LEA has 100 Asian children enrolled and 10 of them are identified as children with disabilities,

$$\frac{10 \text{ Asian children with disabilities}}{100 \text{ Asian children enrolled}}$$

then the risk for an Asian child to be identified as a child with a disability in that LEA is 10/100 or 10%.

$$\text{Risk for Asian children} = 10\%$$

If, in the same LEA, there are 200 non-Asian children enrolled and 10 of them are identified as children with disabilities,

$$\frac{10 \text{ non - Asian children with disabilities}}{200 \text{ non - Asian children enrolled}}$$

then the risk for a non-Asian child to be identified as a child with a disability is 10/200 or 5%.

$$\text{Risk for non - Asian children} = 5\%$$

The risk ratio for children from a specified racial/ethnic group (or groups) to be identified in a category is the ratio of the risk for children from that group to the risk for children not in that group. Continuing the prior example, the risk ratio for Asian children and special education identification in that LEA would be 10/5 or 2.0.

$$\text{Risk ratio} = \frac{10}{5} = 2.0$$

We could say that Asian children in the LEA are twice as likely as non-Asian children to be identified for special education. Since this risk ratio is below the threshold of 4.0, the LEA would not be considered significantly disproportionate for Asian children and disability identification.

A LEA is considered to have significant disproportionality when it is significantly disproportionate for a particular racial/ethnic group and disability category for three consecutive years.

### **What is disproportionate representation (SPP/APR Indicators 9 and 10) and how is it related to significant disproportionality for identification?**

In Nebraska, LEAs that have an identification risk ratio greater than 3 for children ages 6-21 for the current year are considered to have *disproportionate representation*. LEAs with disproportionate representation are encouraged to take steps to identify and address factors contributing to their disproportionalities before they are found to have a significant disproportionality.

Nebraska is required to report counts and percentages of LEAs with disproportionate representation in the category of identification as a child with a disability for the State Performance Plan/Annual Performance Report (SPP/APR) Indicator 9, and counts and percentages of LEAs with disproportionate representation in the six specific identification categories for SPP/APR Indicator 10.

Nebraska is also required to determine whether each instance of disproportionate representation it identified was the result of inappropriate identification and report in Indicators 9 and 10 counts of LEAs for which it was. To this end, Nebraska requires LEAs with a disproportionate representation to complete and return a policy and procedure review checklist.

### **What is Nebraska's significant disproportionality definition for placement?**

Significant disproportionality in placement occurs when children with disabilities ages 6-21 in a particular racial/ethnic group are at a significantly greater risk than their peers in other racial/ethnic groups of being:

1. inside a regular class for less than 40 percent of the day
2. inside separate schools and residential facilities (not including homebound or hospital settings, correctional facilities, or private schools).

The risk for children with disabilities from a specified racial/ethnic group (or groups) to be placed in a particular environment is calculated by dividing the number of children with disabilities from the specified racial or ethnic group (or groups) being placed in that environment by the total number of children with disabilities from that racial or ethnic group or groups in the LEA. For example, if an LEA has 50 Black children with disabilities and 30 of them are placed inside a regular class for less than 40 percent of the day,

$$\frac{30 \text{ Black children with disabilities placed inside the regular class for less than 40\% of the day}}{50 \text{ Black children with disabilities}}$$

then the risk for a Black child with a disability to be placed inside a regular class for less than 40 percent of the day is 30/50 or 60%.

$$\text{Risk for Black children with disabilities} = 60\%$$

If, in the same LEA, there are 100 non-Black children with disabilities and 10 of them are placed inside a regular class for less than 40 percent of the day,

$$\frac{10 \text{ non-Black children with disabilities placed inside the regular class for less than 40\% of the day}}{100 \text{ non-Black children with disabilities}}$$

then the risk for a non-Black child to be placed inside a regular class for less than 40 percent of the day is 10/100 or 10%.

$$\text{Risk for non-Black children with disabilities} = 10\%$$

The risk ratio for children with disabilities from a specified racial/ethnic group (or groups) to be placed in a particular environment is the ratio of the risk for children from that group to the risk for children not in that group. Continuing the prior example, the risk ratio for Black children with disabilities and placement inside a regular class for less than 40 percent of the day would be 60/10 or 6.0.

$$\text{Risk ratio} = \frac{60}{10} = 6.0$$

We could say that Black children with disabilities in the LEA are six times as likely as non-Black children with disabilities to be placed inside a regular class for less than 40 percent of the day. Since this risk ratio is above the threshold of 4.0, the LEA would be considered significantly disproportionate for Black children with disabilities and placement inside a regular class for less than 40 percent of the day.

A LEA is considered to have significant disproportionality when it is significantly disproportionate for a particular racial/ethnic group and disability category for three consecutive years.

### **What is Nebraska's significant disproportionality definition for discipline?**

Significant disproportionality in discipline occurs when children with disabilities ages 3-21 in a particular racial/ethnic group are at a significantly greater risk than their peers in other racial/ethnic groups of being:

1.  $OSS \leq 10$ . Suspended out-of-school or expelled for 10 days or fewer
2.  $OSS > 10$ . Suspended out-of-school or expelled for more than 10 days
3.  $ISS \leq 10$ . Suspended in-school for 10 days or fewer
4.  $ISS > 10$ . Suspended in-school for more than 10 days.

The risk for children with disabilities from a specified racial/ethnic group (or groups) to be disciplined in a particular way is calculated by dividing the number of children with disabilities from the specified racial or ethnic group (or groups) being disciplined in that way by the total number of children with disabilities from that racial or ethnic group or groups in the LEA.

For example, if an LEA has 1000 White children with disabilities and 50 of them are suspended in-school for more than 10 days,

$$\frac{50 \text{ White children with disabilities suspended in-school for more than 10 days}}{1000 \text{ White children with disabilities}}$$

then the risk for a White child with a disability to be suspended in-school for more than 10 days is 50/1000 or 5%.

*Risk for White children with disabilities = 5%*

If, in the same LEA, there are 100 non-White children with disabilities and 10 of them are suspended in-school for more than 10 days,

$$\frac{10 \text{ non-White children with disabilities suspended in-school for more than 10 days}}{100 \text{ non-White children with disabilities}}$$

then the risk for a non-White child to be suspended in-school for more than 10 days is 10/100 or 10%.

*Risk for non-White children with disabilities = 10%*

The risk ratio for children with disabilities from a specified racial/ethnic group (or groups) to be disciplined in a particular way is the ratio of the risk for children from that group to the risk for children not in that group. Continuing the prior example, the risk ratio for White children with disabilities and in-school suspension for more than 10 days would be 5/10 or 0.5.

$$\text{Risk ratio} = \frac{5}{10} = 0.5$$

We could say that White children with disabilities in the LEA are half as likely as non-White children with disabilities to be suspended in-school for more than 10 days. Since this risk ratio is below the threshold of 4.0, the LEA would not be considered significantly disproportionate for White children with disabilities in the category of suspended in-school for more than 10 days.

5. Total Removals. Significant disproportionality in discipline also occurs when children with disabilities ages 3-21 in a particular racial/ethnic group experience a significantly greater average number of disciplinary removals than their peers in other racial/ethnic groups. The total number of removals includes in-school and out-of-school suspensions, expulsions, removals by school personnel to an interim alternative educational setting, and removals by a hearing officer.

The total removals per child (TRPC) for children with disabilities from a specified racial/ethnic group (or groups) is calculated by dividing the total number of removals for children ages 3-21 from the specified racial or ethnic group (or groups) by the total number of children with disabilities from that racial or ethnic group or groups in the LEA.

For example, if an LEA has 100 Hispanic/Latino children with disabilities and 120 total removals between them,

$$\frac{120 \text{ total removals for Hispanic or Latino children with disabilities}}{100 \text{ Hispanic or Latino children with disabilities}}$$

then the TRPC for Hispanic/Latino children with disabilities is 120/100 or 1.2.

$$\text{Total Removals Per Hispanic or Latino Child} = \frac{120}{100} = 1.2$$

If, in the same LEA, there are 100 children with disabilities who are not Hispanic or Latino and these children experience 60 total removals,

$$\frac{60 \text{ total removals for non - Hispanic or Latino children with disabilities}}{100 \text{ non - Hispanic or Latino children with disabilities}}$$

then the TRPC for children who are not Hispanic or Latino is 60/100 or 0.6.

$$\text{Total Removals Per non - Hispanic or Latino Child} = \frac{60}{100} = 0.6$$

The TRPC ratio for children with disabilities from a specified racial/ethnic group (or groups) is the ratio of the TRPC for children from that group to the TRPC for children not in that group. Continuing the prior example, the TRPC ratio for Hispanic/Latino children with disabilities would be 1.2 / 0.6 or 2.0.

$$\text{Total Removals Per Child Ratio} = \frac{1.2}{0.6} = 2.0$$

We could say that Hispanic/Latino children with disabilities in the LEA receive twice as many disciplinary removals as children who are not Hispanic/Latino. Since this TRPC ratio is below the threshold of 4.0, the LEA would not be considered significantly disproportionate for Hispanic/Latino children with disabilities in the total removals category.

#### **Indicator 4: What is significant discrepancy (SPP/APR Indicator 4) and how is it related to significant disproportionality for discipline?**

SPP/APR Indicator 4 focuses on *significant discrepancy*. The data comes from a single discipline category: being suspended out-of-school or expelled for more than 10 days. Federal regulations allow states many options for performing significant discrepancy calculations, but none of them match the calculation allowed for significant disproportionality. In particular, significant disproportionality requires a direct comparison of racial/ethnic groups with each other within each LEA, while significant discrepancy prohibits such a comparison.

In Nebraska, significant discrepancy calculations use risk as the basic calculation. LEAs in which children with disabilities ages 3-21 have a risk of greater than 5% are considered to have a significant discrepancy. Nebraska is required to report a count of its LEAs with a significant discrepancy for SPP/APR indicator 4A

LEAs in which children with disabilities ages 3-21 from any particular racial or ethnic group have a risk of greater than 5% are also considered to have a significant discrepancy.

Nebraska is required to report a count of its LEAs with a significant discrepancy by race or ethnicity for SPP/APR indicator 4B. The state must also report a count and percentage of its LEAs that have a significant discrepancy by race or ethnicity and also policies, procedures or practices that contribute to the significant discrepancy and do not comply with requirements relating to the development and implementation of IEPs, the use of positive behavioral interventions and supports, and procedural safeguards. To this end, Nebraska requires LEAs with a significant discrepancy by race or ethnicity to complete and return a policy and procedure review

checklist which includes these factors. LEAs with significant discrepancies by race or ethnicity are also encouraged to take steps to identify and address the root causes of the discrepancies before they are found to have a significant disproportionality.

### What if we have a small number of children? Non-calculation and alternate risk ratios

The regulations allow states to exclude from the calculations groups that are too small for reliable calculations. Nebraska uses a minimum cell size of 10 and a minimum n size of 30<sup>1</sup>. This has consequences for all disproportionate representation, significant discrepancy, and significant disproportionality calculations. The particular consequences depend on whether the small numbers affect the target group or the comparison group.

- **Target group cell size.** If the target racial or ethnic group has fewer than 10 children in the numerator of any risk or TRPC calculation, that calculation is not performed for that racial or ethnic group. For example, if an LEA has fewer than 10 American Indian or Alaskan Native children identified with emotional disturbance, then no risk calculation is made for American Indian or Alaskan Native children in the emotional disturbance category. This would affect significant disproportionality and indicator 10.
- **Target group n size.** If the target racial or ethnic group has fewer than 30 children in the denominator of any risk or TRPC calculation, that calculation is not performed for that racial or ethnic group. For example, if an LEA has fewer than 30 Native Hawaiian or Other Pacific Islander children identified with a disability, then no risk calculations are made for American Indian or Alaskan Native children in any of the seven placement or discipline categories of significant disproportionality, nor for significant discrepancy (indicator 4B).
- **Comparison group cell size and n size.** If the comparison group has fewer than 10 children in the numerator of any risk or TRPC calculation, or fewer than 30 in the denominator of any risk or TRPC calculation, it is replaced by a comparison group at the state level, which is presumed to be large enough. This is called an “alternate risk ratio.” For example, if an LEA has 30 or more White children with disabilities, with 10 or more of them inside separate schools and residential facilities, then a risk calculation can be made. If, however, the LEA has fewer than 30 non-White children with disabilities or fewer than 10 inside separate schools and residential facilities, then the alternative risk ratio must be used. The risk for White children in the LEA is divided by the state-level risk for non-White children.

$$\frac{15 \text{ White children with disabilities inside separate schools and residential facilities}}{60 \text{ White children with disabilities}}$$

$$\text{Risk} = \frac{15}{60} = 0.25$$

$$\frac{100 \text{ non-White children with disabilities inside separate schools and residential facilities IN THE STATE}}{200 \text{ non-White children with disabilities IN THE STATE}}$$

$$\text{State-Level Risk} = \frac{100}{200} = 0.50$$

$$\text{Alternate Risk Ratio} = \frac{.25}{.50} = 0.50$$

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<sup>1</sup> For the purpose of indicator 4, the minimum cell size of 10 and the minimum n size of 30 are considered together to be the “State-established n size.”

**Must an LEA meet the definition for significant disproportionality in each of the categories before being identified with significant disproportionality?**

No. The LEA only needs to meet the definition for one of the 14 categories and one of the 7 racial or ethnic groups to be identified with significant disproportionality.

**When is LEA data examined for significant disproportionality, significant discrepancy, and disproportionate representation?**

Identification and Placement data will be examined by March each year; LEAs will be notified by April. Discipline data will be examined by September each year; LEAs will be notified by October.

**Where does the data being examined come from?**

Identification and placement data is taken from the October 1 special education child count submitted to NSSRS. Discipline data is taken from the Special Education Discipline report that is submitted by LEAs each June and compared with the cumulative year-end special education count also collected in June through NSSRS.

**How will an LEA be notified if they have disproportionality?**

LEAs found to have a risk ratio of greater than 3.0 in the current year are considered to be at risk for significant disproportionality and will be notified in writing by NDE. Once the LEA has been notified, NDE staff may offer supports and services to the LEAs. NDE may help facilitate the LEA's use of the IDC Success Gap Toolkit to conduct a self-evaluation of their current practices and procedures and develop an action plan if needed to address any issues causing a LEA to become significantly disproportionate.

If the data in the same category has a risk ratio greater than or equal to 4.0 for a third consecutive year, the LEA will receive a written notification from NDE of significant disproportionality.

**Why is an LEA being found to have a significant disproportionality when they were already told they are appropriately referring, evaluating and identifying children for special education?**

There is potential for conflicting messages to LEAs regarding the appropriateness of their policies and practices and findings of significant disproportionality. A LEA may be flagged based on the thresholds used within the State Performance Plan but -- following the necessary policy and practice review -- be found to demonstrate appropriate identification practices. The conflicting message would then occur when NDE is forced to make a determination of significant disproportionality due to the LEA's data alone. LEAs found to have significant disproportionality must engage in root cause analysis to determine what may be contributing to the disproportionality.

**What happens if a LEA is identified as having significant disproportionality?**

LEAs found to have significant disproportionality must identify and address the factors contributing to the significant disproportionality. NDE will help them with this process. One tool that may be helpful is IDC's [Success Gaps Toolkit](#).

Additionally, the LEA must set aside 15 percent of their special education funds to provide Comprehensive Coordinated Early Intervening Services designed to help address the factors identified.

### **Where can I find additional information about Comprehensive Coordinated Early Intervening Services (CCEIS)?**

A guidance document around CCEIS is located on the NDE Special Education website at, <http://www.education.ne.gov/sped/finance.html>

### **Can a LEA provide early intervening services even if they aren't identified with Significant Disproportionality?**

Yes, LEAs may voluntarily set aside up to 15 percent of their special education funds to provide Coordinated Early Intervening Services (CEIS). A LEA might choose to do this, for example, if they have been identified in the Cautionary Zone for disproportionality.